

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: ) Chapter 11  
 )  
EASTERN LIVESTOCK CO., LLC, ) Case No. 10-93904-BHL-11  
 )  
Debtor. ) Hon. Basil H. Lorch III

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT  
WITH DAVID A. PHILLIPS, DJ FOODS/TEXAS BRAND RIBS, INC., SINKING  
SPRINGS LAND AND CATTLE, INC. AND CITIZENS UNION BANK  
PURSUANT TO RULE 9019**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC (the "Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee and David A. Phillips, DJ Foods/Texas Brand Ribs, Inc., Sinking Springs Land and Cattle, Inc. (hereinafter, collectively, "Obligors") and Citizens Union Bank (hereinafter "Citizens Union") pursuant to the terms and conditions set forth in the Settlement and Assignment Agreement substantially in the form attached hereto as Exhibit A (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

**Introduction and Background**

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This

Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. Pursuant to an investigation of the Debtor's books and records, the Trustee has generally asserted that Obligors are indebted to ELC based upon a Promissory Note in the current principal sum of \$850,000.00, plus interest, charges, and additional fees and expenses; that the Trustee is entitled to a judgment against the Obligors; and that the Trustee is entitled to foreclose upon a Mortgage upon real estate located in Washington County, Indiana (the "Real Estate"), and other collateral, owned by Defendant David A. Phillips.

4. The Trustee filed his Complaint on Promissory Note and to Foreclose Mortgage on Real Estate (the "Lawsuit") against Obligors on October 19, 2012, in the Washington Circuit Court under Cause No. 88C01-1210-MF-000740 to recover the amounts due to ELC from the Obligors.

5. The Trustee filed his First Amended Complaint on Promissory Note and to Foreclose Mortgage on Real Estate in the Lawsuit on December 7, 2012, which First Amended Complaint named additional parties as defendants, including Citizens Union, which allegedly holds a lesser priority mortgage against the Real Estate and other assets owned by Defendant Phillips.

6. Title work obtained by the Trustee and responses filed in the Lawsuit indicate that ELC's mortgage interest in Real Estate owned by Defendant Phillips is

subordinate to the mortgage interest of Farm Credit Services of Mid-America, ACA, in a sum exceeding \$1,000,000.00, and other arguably inferior mortgage, security interests and lease interests have to be dealt with.

7. To avoid the cost, expense, and delay of litigation, Defendant Phillips has reached an arrangement with Defendant Citizens Union whereby Citizens Union would fund to the Trustee the sum of \$525,000.00 (the "Settlement Amount") for the assignment of the obligations owed by Obligors to ELC and the estate's interest in all collateral pledged to ELC (the "Settlement"), provided that the Court enters a final, non-appealable order approving this Settlement Motion (the "Settlement Order").

8. In the exercise of his sound business judgment, the Trustee has determined that the Settlement, including the Assignment described above, is in the best interests of the Debtor's estate and its creditors.

### **The Settlement**

9. The Trustee requests that the Court approve the Settlement of the claims between the Trustee, Obligors and Citizens Union pursuant to the terms and conditions set forth in the Trustee's Motion. The Trustee is seeking the Court's approval of the Settlement because the Settlement Amount is less than the full amount payable to ELC by the Obligors.

### **Basis for Relief**

10. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep.*

*Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

*In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d at 426 (citations omitted).

11. Although the Trustee believes there is legal and factual support for the Trustee's claims brought in the Lawsuit, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the claim, (ii) the probability of success in prosecuting the claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

12. Pursuant to the exercise of his sound business judgment, the Trustee believes that the Settlement described herein is fair and equitable and in the best interests of the estate.

13. Notice of this Settlement Motion will be provided to all creditors, the United States Trustee, all counsel of record, and any other entity that the Court may direct, as provided in Bankruptcy Rules 2002 and 9019.

**WHEREFORE**, if no objections to this Settlement Motion are filed, the Parties request that the Court enter the Settlement Order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court. The Trustee requests that any notice of this motion include language that any objection to this Settlement Motion set forth with specificity any claim that the objecting party has to the Settlement Amount.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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